IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.323/2003**

1. Shri Gopal Kanso Sudir
son of Kanso Sudir,
age 60 years, occupation landlord,

2. Smt. Rama Gopal Sudir,
wife of petitioner No.1,
aged 45 years, occupation housewife,

Both resident of Ossorcim,
Loliem, Canacona, Goa.

3. Shri Babu Nanu Sudir,
son of Nanu Sudir,
age 45, occupation landlord,
resident of H.No.977,
Ossorcim, Canacona. .... Petitioners.

vs.

1. Shri Apa Rama Pagi,
son of Rama Pagi,
major of age, occupation
agriculturist,

2. Smt. Jaya Apa Pagi,
wife of Respondent No.1.
major of age, occupation
housewife.

Both residents of Cazalquer,
Loliem, Canacona, Goa. ..... Respondents.

Shri Sudesh M.S. Usgaonkar, Advocate for the petitioners.

Shri R.G. Ramani, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JULY 31, 2003.

ORAL JUDGMENT:

Rule. The respondents waive service. Heard forthwith.

By an application of 22.11.2002, the plaintiffs, who are the petitioners herein, sought to produce Matriz documents. While filing the plaint, no reference was made to the matriz certificates, but what was mentioned was the documents of the property. The respondents herein opposed the production of the said documents. The trial Court found merit in the said contention and rejected the application. Consequently, the present petition.

2. On behalf of the petitioners, it is contended that these are all public documents pertaining to the property produced from the custody of the Collector and in these circumstances, the respondents need not be surprised. At the highest, an opportunity could be given to the respondent to produce any document in rebuttal, if they so desire. The trial Court, while considering the application proceeded on the footing that there was no whisper about the matriz document in the plaint and that the suit was filed in 1991 and in these circumstances, rejected the application. Even assuming that the suit was filed in the year 1991, the documents are subsequent. It is contended on behalf of the petitioners that the documents are those documents which are set out in paragraph 7 of the petition. Those documents are necessary for them to prove their case. In the facts

and circumstances, the petitioners contend that the order dated 30.12.2002 of the learned trial Court is liable to be set aside.

On behalf of the respondents, it is contended that the application, as made, did not disclose any reason and in these circumstances, no fault can be found with the order of the Court below or for that matter, any error apparent.

4. The trial Court had to consider whether the petitioners had made out a case for production of the documents. The evidence in the matter has just started. The suit was of the year 1991. The documents are of the year 1994 i.e. subsequent to the filing of the suit and were made available to the petitioners after filing of the suit. The documents are public documents and, in these circumstances, the respondents could not have been surprised by production of the said documents. Even, otherwise, considering that the said documents are necessary to decide the controversy in issue, the trial Court having not addressed itself on the issue, has clearly committed an error on the face of the record. In the light of that the impugned order is liable to be set aside.

5. For the reasons aforesaid, the impugned

order 30.12.2002 is set aside. Rule made absolute in terms of prayer Clauses (a) and (b). It is made clear that if the respondents desire to produce any evidence in rebuttal, they would be so permitted.

Considering that the evidence has commenced, the trial Court is directed to permit the petitioners to produce the documents in evidence.

Rule accordingly. There shall be no order as to costs.

F.I. REBELLO, J.

ssm.